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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CENTRAL VALLEY YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC.,

Plaintiff and Respondent,

v.

THE SEQUOIA LAKE CONFERENCE OF
YOUNG MEN'S CHRISTIAN
ASSOCIATIONS,

Defendant and Appellant.

F061635

(Super. Ct. No. 10CECG00746)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Donald R. Franson, Judge.

Atkinson, Andelson, Loya, Ruud & Romo, William M. Woolman and Peter E. Denno for Defendant and Appellant.

Walter W. Whelan and Brian D. Whelan for Plaintiff and Respondent.

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Defendant appeals from an order denying its petition to compel arbitration of plaintiff's claims against it. We conclude defendant failed to demonstrate that it was a party entitled to invoke the arbitration provision; additionally, the dispute did not fall within the scope of the arbitration provision. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Central Valley YMCA, filed a complaint and a first amended complaint against defendants, Sequoia Lake Conference of Young Men's Christian Associations (Sequoia), Golden State YMCA (GSYMCA), and Young Men's Christian Association of Kings County (Kings YMCA). Plaintiff alleged Kings YMCA and the predecessors of GSYMCA and plaintiff formed Sequoia, a public benefit corporation, which contracted to purchase certain real property in the Sierra Mountains in 1922. The YMCAs raised money to fund the purchase of the real property and to construct improvements and purchase equipment for the operation of a recreational camp. In 2007, plaintiff began to experience financial difficulties and conflict in its leadership group; in June 2009, the national YMCA organization revoked plaintiff's charter. On July 11, 2009, members of Sequoia's board of directors who were affiliated with Kings YMCA and GSYMCA approved an amendment to Sequoia's bylaws which effectively removed plaintiff from its membership. This action failed to comply with the notice requirements of Sequoia's bylaws, was not authorized by the articles of incorporation or bylaws, violated the requirements of Corporations Code sections 5341 and 7341, and inequitably divested plaintiff of its interest in the real and personal property assets of Sequoia. Plaintiff sought declaratory relief, injunctive relief, reinstatement of its membership in Sequoia, damages for slander of title, a quiet title judgment determining plaintiff holds an equitable ownership interest in Sequoia's real property, and dissolution of Sequoia and partition of its real property.

Defendants petitioned to compel arbitration of plaintiff's claims. They based their petition on an arbitration provision in the Policies and Procedures Manual of the National Committee on Membership Standards (NCMS) of the national YMCA organization, which they asserted was binding on all chartered YMCAs. Defendants further asserted that plaintiff entered into an agreement with Sequoia to make payments toward the balance it owed to Sequoia as rent for camp usage for 2007 and 2008, but plaintiff failed

to make timely payments; because of the failure to pay, plaintiff's YMCA charter was revoked. Defendants asserted Sequoia's articles of incorporation require that its members be YMCAs, and it amended its bylaws to reflect that plaintiff, no longer a YMCA, was no longer a member of Sequoia Lake. After two rounds of supplemental briefing, on the day of oral argument, plaintiff dismissed the complaint against GSYMCA and Kings YMCA, leaving only its claims against Sequoia. In light of those dismissals, the trial court denied defendant's petition, concluding Sequoia was "not a party to or bound by" the manual in which the arbitration provision appeared, the action did not directly involve the manual, and Sequoia could not enforce the arbitration provision on an agency theory because of the dismissal of the YMCA defendants. Sequoia moved for reconsideration, asserting that the last minute dismissal of its co-defendants deprived it of any opportunity to present meaningful argument about the effect of that dismissal on the arbitration question. The motion was denied. Sequoia appealed from the order denying its petition to compel arbitration and the order denying reconsideration.

DISCUSSION

"On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists," unless one of the specified exceptions applies. (Code Civ. Proc., § 1281.2.) "Arbitration is a favored method of dispute resolution and agreements to arbitrate disputes are liberally interpreted. 'In California, the general rule is that arbitration should be upheld unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. [Citation.]'" (*Izzi v. Mesquite Country Club* (1986) 186 Cal.App.3d 1309, 1315.) "The strong public policy favoring arbitration, however, cannot displace the necessity for an agreement to arbitrate. A person cannot be compelled to

accept arbitration of a dispute he has not agreed to submit to arbitration.” (*Hawkins v. Superior Court* (1979) 89 Cal.App.3d 413, 416.)

“The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. [Citation.]” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) “Whether an arbitration agreement applies to a controversy is a question of law to which the appellate court applies its independent judgment where no conflicting extrinsic evidence in aid of interpretation was introduced in the trial court.” (*Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1670 (*Brookwood*).) No conflicting extrinsic evidence in aid of interpretation was submitted, so we review the question de novo.

I. Parties to Arbitration Provision

“Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it. “The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration. [Citation.]” [Citations.]” (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763 (*Westra*).) When a nonsignatory seeks to enforce an arbitration provision, the nonsignatory bears the burden of establishing it is a party to the arbitration provision covering the dispute. (*Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 15 (*Jones*).) Thus, it was Sequoia’s burden to establish that it was a party to the arbitration agreement, entitled to invoke it against plaintiff.

Sequoia’s petition to compel arbitration was based on an arbitration provision in the NCMS policies and procedures manual. According to the manual’s introduction, the YMCA of the USA (Y-USA) charges the NCMS with the task of chartering new YMCAs and annually certifying the membership of existing YMCAs in the National Council.

“While each member association is an independent and autonomous organization, each also must qualify for membership in the National Council and be recognized by the Y-USA Board to represent itself as a YMCA” and to use the YMCA name, marks, and logos in its service area. The manual sets forth rules and policies for administration of the requirements for member associations. The arbitration provision on which Sequoia based its petition is found in section 13.4 of Article XIII of the manual. Article XIII is entitled “Service Areas,” and states: “It is the objective of YMCA of the USA (Y-USA) to make YMCA services available where it is feasible to provide them. [¶] To pursue this objective most effectively, Y-USA establishes and recognizes well-defined service areas in which specific member associations have primary responsibility for providing and expanding YMCA services and facilities to meet community needs.” Section 13.1 defines “service area”: “The term *service area* refers to the geographic area recognized by Y-USA in which a corporate member association has a prior right to provide YMCA programs, goods, and services; recruit volunteer leadership; enlist members; market programs and memberships; and solicit financial support.” Section 13.4, the arbitration provision, provides:

“a. In the event there is a conflict regarding a service area (or service provided under a non-service-area charter) that cannot be resolved independently between the affected member associations, the procedure below shall apply. [¶] ... [¶]

“iii. If the conflict cannot be resolved by mediation, the dispute shall be referred back to the appropriate RCMS [Region Committee on Membership Standards] chair who shall appoint an arbitration panel consisting of three (3) members of the RCMS, none of whom have participated in the mediation. The arbitration panel shall conduct a hearing in a manner that assures that the affected member association(s) has a fair opportunity to be heard. The RCMS arbitration panel, in consultation with the chair, shall render a decision; the decision of the RCMS arbitration panel shall be binding on all affected member associations.”

Sequoia's verified petition to compel arbitration asserted that the arbitration provision in the policies and procedures manual is binding on all chartered YMCAs; it stated GSYMCA and Kings YMCA are nationally chartered YMCAs. It did not claim that Sequoia is a nationally chartered YMCA or that the provisions of the policies and procedures manual are binding on Sequoia. Rather, Sequoia claimed it was entitled to invoke the arbitration provision because it was the agent of GSYMCA and Kings YMCA, which were chartered members bound by the arbitration provision.

"There are exceptions to the general rule that a nonsignatory to an agreement cannot be compelled to arbitrate and cannot invoke an agreement to arbitrate, without being a party to the arbitration agreement. [Citation.] A nonsignatory to an agreement to arbitrate may be required to arbitrate, and may invoke arbitration against a party, if a preexisting confidential relationship, such as an agency relationship between the nonsignatory and one of the parties to the arbitration agreement, makes it equitable to impose the duty to arbitrate upon the nonsignatory. [Citation.]" (*Westra, supra*, 129 Cal.App.4th at p. 765.)

In *Westra*, the Westras sued a real estate agent, MM, for fraud in connection with their purchase of a gas station. The purchase agreement identified the Westras as the buyers, Skyline as the seller, and MM as the agent. It included an arbitration provision that stated "Buyer, Seller and Agent" agreed to arbitrate controversies "aris[ing] with respect to the subject matter of this Purchase Agreement or the transaction contemplated." (*Westra, supra*, 129 Cal.App.4th at p. 762.) The Westras and Skyline signed the agreement and initialed the arbitration provision; MM did not. MM's petition to compel arbitration was denied by the trial court, apparently because MM never signed, or became a party to, the contract. On appeal, MM contended it was entitled to enforce the arbitration provision because it was the agent of the signatories. The court stated MM was acting as the agent of both parties in a preexisting agency relationship, and the language of the arbitration provision indicated all three parties agreed to arbitration. (*Id.*

at p. 766.) Additionally, the Westras' complaint alleged that MM was acting as the agent of Skyline and the Westras in the transaction. (*Id.* at pp. 766-767.) The court concluded the language of the arbitration provision was binding on MM, the Westras were bound by their judicial admission, and MM was entitled to enforce the arbitration agreement. (*Id.* at p. 766.)

In *Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, the plaintiff sued a football team (the Rams) and four individuals for breach of his employment contract. The defendants petitioned to compel arbitration pursuant to a provision in that contract which called for arbitration of disputes involving interpretation or application of any contract provisions. The trial court denied the petition as to the individual defendants, on the ground they were not signatories to the contract. The appellate court reversed. The complaint alleged three of the individual defendants were sued in their capacities as operators and managing agents of the Rams. (*Id.* at p. 418.) It alleged all four were parties to the contract and breached it; the trial court found each cause of action was governed by the contract. The appellate court concluded: "If it is true that all of the significant issues in this suit arise out of the contract or the alleged breach of contract, and if the trial court correctly concluded that the individual defendants are not parties to the contract (presumably because they were not signatories), then it is not clear that these defendants belong in this suit at all. If, as the complaint alleges, the individual defendants, though not signatories, were acting as agents for the Rams, then they are entitled to the benefit of the arbitration provisions." (*Id.* at p. 418, fn. omitted.) The court concluded the claims against the individual defendants should be referred to arbitration (*Ibid.*)

In cases such as these, where an agent was held to be subject to, or entitled to invoke, an arbitration provision, the dispute involved the contract containing the arbitration provision, and the agent was acting as agent for one or more of the parties to the contract in the factual situation that gave rise to the dispute. In other words, both the

dispute and the agency were related to the contract containing the arbitration provision. In the instant case, however, no such connection was shown. The arbitration provision Sequoia relies on appears in the NCMS policies and procedures manual, which contains rules for membership of individual YMCAs in the National Council; it also governs some aspects of the relationship between individual YMCAs and the national organization and the relationship among YMCAs, including the establishment of the geographic area each serves.

Sequoia presented no evidence it was the agent of either GSYMCA or Kings YMCA. Instead it relied on the agency allegations in plaintiff's complaint. Plaintiff's complaint and first amended complaint allege generally that, "[a]t all relevant times, each of the Defendants was the agent, servant, employee and joint venturer of each of the other Defendants and was, at all times, acting within the course and scope of such agency, service, employment and joint venture."

The complaint and first amended complaint allege that plaintiff, GSYMCA, and Kings YMCA (or their predecessors), formed Sequoia and became its members. Sequoia contracted for the purchase of certain real property; the members of Sequoia raised funds for acquisition of the real property, as well as personal property needed for the operation of a recreational camp. Plaintiff alleges it holds an equitable possessory interest in Sequoia's property. After many years, however, Sequoia purported to expel plaintiff from its membership and prevent plaintiff's continued use of Sequoia's property. Plaintiff alleges this action was invalid because it did not comply with Sequoia's bylaws or the Corporations Code. The trial court found "Sequoia Lake Conference is not a party to or bound by the document containing the arbitration provision (the National YMCA Organization's National Committee on Membership Standard's Policies and Procedures Manual), this action does not directly involve the Manual, and no longer are any agents bound by the arbitration provision parties to this action." We agree Sequoia did not establish that it was a party or agent entitled to enforce the arbitration provision.

Plaintiff's pleadings do not allege any dispute involving the national YMCA organization; they do not allege any controversy among the three YMCAs about the geographic areas to be served by plaintiff, GSYMCA, and Kings YMCA. Plaintiff does not allege any dispute it has with GSYMCA or Kings YMCA as individual YMCAs or as members of the national organization. The dispute alleged concerns three members of a nonprofit corporation, their respective rights in that corporation, and the corporation's (or the other members') authority to oust one of the members and terminate its ownership interest in the corporation by vote of its board of directors. While the complaint alleges Sequoia, GSYMCA, and Kings YMCA were agents of one another, this is alleged in the context of the dispute alleged in the complaint—a dispute about the rights and duties of the members of Sequoia among themselves and with respect to the corporation. Sequoia is not alleged to be an agent of GSYMCA and Kings YMCA in any activities or relationship governed by the NCMS policies and procedures manual. Thus, Sequoia has not alleged or demonstrated that it was an agent of GSYMCA or Kings YMCA, or both, in connection with a dispute governed by the arbitration clause found in the NCMS policies and procedures manual.

II. Dispute within the Scope of the Arbitration Provision

The court is required to order arbitration of a controversy only “if it determines that an agreement to arbitrate the controversy exists.” (Code Civ. Proc., § 1281.2.) The controversy alleged in plaintiff's complaint is not one that falls within the arbitration provision of the NCMS policies and procedures manual. That arbitration provision is limited in scope. It pertains only to “a conflict regarding a service area (or service provided under a non-service-area charter).” The controversy alleged in plaintiff's pleadings concerns the rights of a member of a nonprofit corporation in that corporation; it presents a dispute between Sequoia and plaintiff about Sequoia expelling plaintiff from membership in the corporation and preventing its continued use of corporation property. It does not involve competing claims to the rights to provide YMCA goods, services, and

programs, recruit members and volunteers, or solicit financial support in a particular geographic area or areas.

Sequoia relies on the trial court's tentative ruling on the petition to compel arbitration as somehow determining the dispute is one governed by the arbitration provision. A tentative ruling, however, is just that. It is subject to change by the trial court and, in this instance, the trial court did not adopt the tentative ruling as its final order. Its final order concluded "this action does not directly involve the Manual," which we interpret to mean it concluded the dispute alleged in this action is not governed by the manual or its arbitration provision. In any event, because no conflicting extrinsic evidence was presented to aid the trial court in interpreting the arbitration provision, we review the question of the application of the arbitration provision de novo. (*Brookwood, supra*, 45 Cal.App.4th at p. 1670.) The complaint does not include any allegations concerning service areas or geographic areas in which the various YMCAs provide services. It presents a dispute about membership in a nonprofit corporation and use of its property. Consequently, the trial court's denial of the petition to compel arbitration was also correct on the ground that the dispute alleged in the complaint was not within the scope of the arbitration provision Sequoia invoked.

III. Equitable Estoppel

Sequoia also argues that it has standing to enforce the arbitration provision based on equitable estoppel. The argument is without merit. "Equitable estoppel precludes a party from asserting rights 'he otherwise would have had against another' when his own conduct renders assertion of those rights contrary to equity.' [Citation.] In the arbitration context, a party who has *not* signed a contract containing an arbitration clause may nonetheless be compelled to arbitrate when he seeks enforcement of other provisions of *the same contract* that benefit him. [Citations.]" (*Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1713, final italics added.) "Claims that rely upon, make reference to, or are intertwined with claims

under the subject contract are arbitrable.’ [Citations.]” (*Jones, supra*, 195 Cal.App.4th at p. 20.) The doctrine of equitable estoppel “‘prevent[s] a party from using the terms or obligations of an agreement as the basis for his claims against a nonsignatory, while at the same time refusing to arbitrate with the nonsignatory under another clause of that same agreement.’ [Citation.]” (*Ibid.*)

Plaintiff is not making claims against Sequoia under the NCMS policies and procedures manual. It is not asserting claims that “‘rely upon, make reference to, or are intertwined with claims under the”” policies and procedures manual. (*Jones, supra*, 195 Cal.App.4th at p. 20.) Thus, it is not asserting claims against Sequoia under the manual, while inequitably refusing to arbitrate pursuant to another provision of the manual.

DISPOSITION

The order is affirmed. Plaintiff is entitled to its costs on appeal.

Hill, P.J.

WE CONCUR:

Levy, J.

Cornell, J.